IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24729 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? YES

2 To be referred to the Reporter or not ? YES

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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SURESHBHAI SANKARBHAI PARMAR - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
Mr. L.R. Pujari, AGP, for Respondent Nos. 1-3,
M IA SHAIKH for Respondent(s) : 4,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 17/02/2006

ORAL JUDGMENT

1. Sureshbhai Sankarbhai Parmar, petitioner, has filed this habeas corpus petition under Article 226 of the Constitution of India challenging the detention order

dated 20.12.2005 passed by the District Magistrate, Surendranagar, respondent No. 2, under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as “PBM Act”) as being illegal, invalid and in violation of Articles 14, 21 and 22 of the Constitution of India. The petition was filed on 26.12.2005. When the matter was placed for hearing on 27.12.2005 this Court issued rule returnable on 12.1.2006. On behalf of the respondent State of Gujarat, respondent No. 1; District Magistrate, Surendranagar, respondent No. 2 and Jail Superintendent, Porbandar, respondent No. 3 Mr. L.R. Pujari, learned AGP, appears and on behalf of Union of India Mr. M.A. Shaikh, Central Government Standing Counsel, appears.

1.1 Mr. H.R. Prajapati, learned advocate for the petitioner, has invited my attention to the fact that the District Magistrate has passed order of detention under sub-section (2) of Section 3 of the PBM Act on 20.12.2005. He has also invited my attention to the order of detention dated 20.12.2005 by which the petitioner was detained in jail at Porbandar. The authority has supplied the grounds of detention also. The order of grounds

stated that the petitioner can make representation to the Secretary, Advisory Board, Additional Secretary, Food and Civil Supply, Gandhinagar and Additional Secretary for Consumers and others, Public Distribution Department, New Delhi.

1.2 There are several contentions raised by Mr. Prajapati for assailing the order of detention. However, out of that the learned counsel for the petitioner has desired to challenge the said detention only on one ground namely, the order of detention is based on the ground of apprehension. The learned advocate for the petitioner has made representation dated 17.10.2005 to the detaining authority as well as the sponsoring authority. The said representation was against the proposed order of detention being passed by the authority against the detenu proposed to be exercised under the power conferred under sub-Section (2) of Section 3 of the PBM Act. The petitioner has annexed the said representation at Annexure-D at page 36 to the petition.

1.3 The learned advocate for the petitioner states that on behalf of the petitioner he has made representation to the detaining authority as well as the

sponsoring authority. The said representation was made to the authority on 17.10.2005 and prayed that before the authority passes any order of detention, the representation of the petitioner requires to be considered. It is the case of the petitioner that the said representation has been received by the office of the detaining authority. It is the case of the petitioner that by the said representation the detaining authority was requested not to pass order as the circumstances do not justify for exercising power under the provisions of the PBM Act.

1.4 Relying upon these facts the learned advocate for the petitioner submitted that the representation being a vital document the detaining authority ought to have considered the same before passing the order of detention. He has invited my attention to the order of detention but the detention order does not mention the said representation. The learned advocate for the petitioner therefore submitted that since the detaining authority failed and neglected to consider the representation which according to him is a very essential document which has bearing on the order of detention, the subjective satisfaction of the detaining authority gets

vitiated. In support of this contention, the learned advocate for the petitioner has invited my attention to the affidavit filed by the detaining authority, Dhananjay Dwivedi, District Magistrate, Surendranagar dated 16.2.2005. In para 11 of the said affidavit where the authority has tried to meet with the challenge made by the petitioner. The reply is as under:

> "Para 11 – With reference to para 4(p) and 4(q) of the petition I say that I have not referred and relied upon the representation dated 17.10.2005. As there were sufficient materials before me for arriving at the conclusion that the petitioner is indulging in the activity of black marketing of blue kerosene which is prejudicial to the maintenance of supply of commodities essential to the society. Therefore, contentions raised by the petitioner in this paras are not true, correct and proper the same is not tenable at law."

1.5 On behalf of Union of India, respondent No. 4, Mr. M.A. Shaikh, learned Central Government Standing Counsel appears. He has filed affidavit of one A.K. Ganguly, Under Secretary in the Department of Consumer

Affairs, Food and Public Distribution, New Delhi.

2. In support of the contention that the document which has a relevance and bearing on the order of detention to be passed which according to the learned advocate for the petitioner is a significant document and if the same is not considered the order of detention stands vitiated. The learned counsel has relied on the judgement of Hon'ble Supreme Court in the case of SITA RAM SOMANI VS. STATE OF RAJASTHAN AND OTHERS reported in (1986) 2 SCC 86. From the said judgement it appears that the representation made by the petitioner was before the Screening Committee but the same was not placed before the detaining authority and the detaining authority has stated that the same was not considered. According to the Hon'ble Supreme Court it was the detaining authority who has to consider the relevant material before taking decision whether it was necessary to detain the petitioner under detention law or not.

2.1 The learned advocate for the petitioner has relied on another decision of the Hon'ble Supreme Court in the case of AYYA @ AYUB VS. STATE OF U.P. AND ANOTHER reported in (1989) 1 SCC 374 particularly para 28. The

relevant portion of para 28 is reproduced as under:

> "If a piece of evidence which might reasonably have affected the decision whether or not to pass an order of detention is excluded from consideration, there would be a failure of application of mind which, in turn, vitiates the detention. The detaining authority might very well have come to the same conclusion after considering this material; but in the facts of the case the omission to consider the material assumes materiality."

2.2 The learned counsel has relied on the decision of the Hon'ble Supreme Court in the case of AHAMED NASSAR VS. STATE OF TAMIL NADU AND OTHERS reported in (1999) 8 SCC 473 particularly para 20 on page 485 where the Hon'ble Supreme Court has observed as under:

> "A man is to be detained in the prison based on the subjective satisfaction of the detaining authority. Every conceivable material which is relevant and vital which may have a bearing on the issue should be placed before the

detaining authority. The sponsoring authority should not keep it back, based on his interpretation that it would not be of any help to a prospective detenu. The decision is not to be made by the sponsoring authority. The law on this subject is well settled; a detention order vitiates if any relevant document is not placed before the detaining authority which reasonably could affect his decision."

2.3 The learned advocate for the petitioner has further relied on the decision of the Hon'ble Supreme Court in the case of V.C. MOHAN VS. UNION OF INDIA AND OTHERS reported in (2002) 3 SCC 451 particularly paragraph Nos. 12 and 13. The relevant portion of para 12 of the said judgement on page 455 is as under:

"The factum of non-placement of relevant documents, in our view, has had a serious effect and made definite inroad into petitioner's liberty without application of mind. Non-placement of the order of payment of additional duty of Rs. 11,56,803/- within 30 days from the receipt of the order of the Commission has not

only transgressed the rights of the petitioner but in our view speaks volumes about the conduct of the officials rendering the proceeding before the detaining authority vitiated and thus turned out to be illegal."

2.4 Further in paragraph 13 on page 455 of the said judgement the Hon'ble Supreme Court has observed thus:

"The hallmark of the concept of justice, as is available in the justice delivery system of the country is that the conduct of the detaining authority or as a matter of fact any governmental authority ought to be fair and reasonable. The accepted methodology of governmental working should always be in tune with the concept of fairness and not de hors the same – a person is being placed under detention without trial and neither there is any scope for overzealous nor acting in a manner without due and proper application of mind – in either of the situation of law courts should be able to protect the individual from the administrative ipse dixit. The draconian

concept of law has had its departure quite sometime back and rule of law is the order of the day. It is this rule of law which should prompt the law courts to act in a manner, fair and reasonable having due regard to the nature of the offences and vis-a-vis the liberty of the citizens.”

2.5 The learned advocate for the petitioner has also relied on the decision of the Hon'ble Supreme Court in the case of K.S. NAGAMUTHU VS. STATE OF TAMIL NADU & ORS., reported in 2005 AIR SCW 6124. In view of the same, since relevant relevant material was withheld from the detaining authority, the order of detention must be struck down as being illegal.

3. On the other hand Mr. L.R. Pujari, learned AGP for the respondents has stated that the representation has been made by the petitioner but if the authority considers that for passing the detention order the same is not relevant and material document, the authority can ignore same and failing to put up same by the sponsoring authority before the detaining authority does not vitiate the order of detention. According to the learned AGP all

other material documents have been placed by the sponsoring authority to the detaining authority. He has relied on the affidavit of Dhananjay Dwivedi, District Magistrate, Surendranagar, dated 16.2.2005. It was stated that the authority has considered the entire facts and circumstances of the case and has passed order with proper application of mind to all the relevant materials placed before the authority and to the facts and circumstances of the case as well as legal provisions applicable to the facts of the case and therefore no right much less fundamental right of the petitioner is violated by the authority.

3.1 I have considered the facts and circumstances of the case. It is no doubt true that the petitioner has no right to make representation before the detention order is passed. However, if the petitioner has made a representation to the authority and invited attention to the grounds that in the facts and circumstances the authority may not pass any detention order. The said representation shows various facts and grounds and clearly pointed out legal position and guidelines and thereafter requested the authority that before the authority passes any order the authority may consider the

the representation. According to this Court the said representation has a bearing on the aspect as to whether order of detention is to be passed or not. The serious material was placed before the authority. On considering the same, it may happen that the detaining authority may confirm the order or may not confirm the order. Thus the decision making process may continue in favour of the detenu or may not continue in favour of the detenu after considering the representation which has been filed by the petitioner. To that extent the representation made by the petitioner which the petitioner is not entitled to make under the legal position, has a great relevance on the decision making process of the detaining authority for passing the order. In view of this and in view of the aforesaid judgements, namely AYYA @ AYUB VS. STATE OF U.P. & ANOTHER (supra), AHAMED NASSAR VS. STATE OF TAMIL NADU & OTHERS (supra), V.C. MOHAN VS. UNION OF INDIA & OTHERS (supra) and K.S. NAGAMUTHU VS. STATE OF TAMIL NADU & ORS. (supra) of the Hon'ble Supreme Court where the Hon'ble Supreme Court has categorically stated that when the material document which can affect the mind of the authority while passing the order and if the said document is not placed before the detaining authority by sponsoring authority, the order of the authority is

vitiated. In view of the same, the contention raised by the learned advocate for the petitioner is required to be accepted. It may be noted that there are several other grounds mentioned in this petition but I have not considered any of those grounds.

4. In view of the above, the petition is allowed. The order of detention passed by the District Magistrate, Surendranagar District, dated 20.12.2005 is quashed and set aside. The petitioner-detenu Sureshbhai Sankarbhai Parmar, is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute. Direct service is permitted.

(K.M. MEHTA, J)

(pkn)